IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

ITR NO.8 Of 1994.

Date of decision: April 27,2007.

The Commissioner, Wealth Tax. ……. Petitioner.

Vs.

Nathu Ram. ……. Respondent.

Coram

The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the petitioner: Mrs.Vandana Kuthiala, Advocate, vice Mr.Vinay Kuthiala, Advocate.

For the respondent: None.

Deepak Gupta, J.(Oral).

The question which has been referred to us in this reference petition is as follows:-

> **"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in allowing deduction under section 5(i)(iv) of the Wealth-tax Act, 1957, in respect of assessee's share in lands and buildings of the firm in which he is a partner?".**

The basic question is whether an assessee under Wealth Tax Act can claim deductions in respect of his share of the assets in a partnership firm. In fact, a similar question which virtually covers the dispute,

---

Whether reporters of local Papers may be allowed to see the judgment? Yes.

in the present case, stands answered by this Court in the case of **Commissioner of Wealth Tax** vs. **Subhash Chand Sud and Another**, **[1991 ITR 64]**. In that case, the question which was referred was in the following terms:-

> "**Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee is entitled to the benefit of the exemptions under Sections 5(1)(xvi) and 5(1)(xxvi) of the Wealth-tax Act, 1957, as regards his proportionate share of the fixed deposits and National Savings Certificates held by the two firms in which he is partner?".**

The only difference is that in the present case exemption sought is in respect of the land and buildings of the firm, whereas, in the case already decided by this Court, exemption sought was in respect of fixed deposits and National Savings Certificate held by the firm. This Court decided the case in favour of the assessee and held that a partnership firm cannot be an assessee under the Wealth Tax Act. The interest of a partner in a partnership firm is assessable wealth in the hands of the partner as provided in Section 4(1)(b) of the Wealth Tax Act. The computation of net wealth of the firm and its allocation to the individual partners are as provided for in Rule 2 of the Wealth Tax Rules. The expression "net wealth" is defined in Section 2(m) of the Act.

Since the firm cannot be an assessee under the Wealth Tax Act, there is no question of exemption under Section 5 of the Act in the matter of computation of the net wealth of the firm. The expression "net wealth" as used in Rule 2 is to be understood in the sense as defined in section 2(m) of the Act. Rule 1A(m) expressly provides that expressions not defined in the rules have the same meaning as assigned to them in the Wealth Tax Act. A perusal of the definition of the expression "net wealth" in Section 2(m) shows that it does not bring in the exemption contained in Section 5 of the Act. The determination of the net wealth of the firm for the purpose of Rule 2 will not, therefore, take into account the exemption contained in Section 5, which applies only to an assessee under the Act. After the net wealth of the firm is allocated to its partners in accordance with Rule 2, the net wealth of each partner is determined by taking into account also the value of his interest in the firm as provided for in section 4 (1)(b) of the Act. As such, there is no valid reason not to grant the benefit of claiming exemption available under Section 5(1) of the Wealth Tax Act in respect of the assets of the firm.

In view of the above position of law which stands settled by this Court, we answer the reference in the

affirmative, in favour of the assessee and against the Revenue.

Copy of this judgment under the signature of the Registrar General of this High Court be forwarded to the Tribunal.

(Deepak Gupta)
Judge.

April 27, 2007.
(Pds)

(Surinder Singh)
Judge.